

P-421/CP-87-216 ORDER REVIEWING OBJECTIONS, CERTIFYING POLLING RESULTS,
DENYING PETITION, AND CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Certain
Subscribers in the Cannon Falls Exchange for
Extended Area Service to the Minneapolis/St.
Paul Metropolitan Calling Area

ISSUE DATE: January 30, 1995

DOCKET NO. P-421/CP-87-216

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PROCEDURAL HISTORY

On September 2, 1994, the Commission issued its ORDER ESTABLISHING RATES FOR POLLING AND ADOPTING LOWER PRICED ALTERNATIVE. The Commission directed polling to proceed in the Cannon Falls exchange to determine whether there was adequate subscriber support to meet the third and final extended area service (EAS) statutory requirement.

Between November 15 and December 30, 1994, the Commission conducted a poll of subscribers in GTE Minnesota's (GTE's) Cannon Falls exchange to determine whether a majority of those voting favored or opposed EAS with the metro calling area.

On December 6, 1994, the Commission received a letter from Doug Duncan, a Cannon Falls exchange subscriber. Mr. Duncan complained that the letter sent with the ballots was unclear because it did not explain that there are two EAS options, one expensive (the flat rate EAS) and one inexpensive (the Community Plus Plan).

On December 30, 1994, the Commission received a letter from Dallas Larson, city administrator of Cannon Falls. Mr. Larson stated that the outcome of the EAS voting may be biased because of the explanatory materials that were included with the ballot. Mr. Larson said that the higher priced alternative was highlighted in bold while the lower priced alternative was "obscurely placed in a subsequent paragraph on the following page." Mr. Larson argued that there may be a need to re-ballot if the EAS is voted down, especially if the results are close.

On January 4, 1995, the Commission received a letter from Wayne Bell, another Cannon Falls exchange subscriber. Mr. Bell is protesting the ballot and letter that were used by the Commission in the polling process. He characterized the EAS as presenting three options: no EAS, unlimited calling, and restricted EAS. The restricted EAS option was described on the back page of the letter, which may have been overlooked by some of the subscribers. Mr. Bell believes that it will be impossible for the EAS to be passed for either the unlimited or the restricted EAS. He is requesting that the ballots from the recently concluded polling not be counted and that new ballots be sent out along with a letter explaining all three options on the same page.

On January 24, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Objections to the Balloting Materials

1. Introduction

Three subscribers from the Cannon Falls exchange have objected that the balloting materials may have unfairly biased the vote against the Cannon Falls EAS proposal. The Commission takes any objections to the fairness of the EAS balloting process seriously. The Commission understands the importance of this issue to subscribers and the Commission's role in assuring a fair process.

With this spirit, the Commission has thoroughly reviewed the balloting materials used in the Cannon Falls exchange and carefully considered the arguments of the objecting parties. Those materials consisted of three items: a yellow Official Extended Area Service Ballot, a generic grey and maroon four-fold brochure entitled "Extended Area Service", and a Cannon Falls-specific letter from the Commission Chairperson dated November, 1994. If the Commission had any doubt about the fundamental fairness of the Cannon Falls polling process, it would not hesitate to remedy the situation by ordering re-polling as requested by the objectors.

2. Commission Analysis

The primary objection to the polling materials was that the failure to characterize and feature the lower priced alternative to EAS as a third option was misleading. This objection appears based upon the assumption that to be fair, a presentation must

- 1) characterize the lower priced alternative as a third option,
- 2) present a description of and the price for that option on the first page of the letter in bold next to the flat rate EAS option, and
- 3) view subscribers indicating a desire to have the lower priced alternative option as favoring installation of EAS.

a. Lower Cost Alternative as a Third Option

While it is possible to conceptualize the lower cost alternative as constituting, eventually, a third option for Cannon Falls subscribers, the Commission does not believe that this is the only fair view of the matter, especially in the context of this poll. The point of the polling was to determine, as the statute states, whether "a majority of the customers responding to a poll in the petitioning exchange favor its [EAS's] installation." Minn. Stat. § 237.161, subd. 1 (a) (2) (1992). The statute itself delineates the two options (favor EAS or oppose EAS) and the materials faithfully reflect that delineation.

b. A "Second EAS Option"

It was also objected that the materials did not make it clear that there are two EAS options: one expensive and one inexpensive. The letter does not characterize the lower cost alternative as an inexpensive EAS option for the reasons stated in the preceding paragraph.

Regardless of how the lower cost alternative is characterized, however, it cannot be maintained that the letter does not inform subscribers that, *if they approved EAS and it was installed*, they could choose a lower cost alternative to flat rate EAS. The following statement appears in bold capital letters at the top of page 2 of the letter.

**A LOWER PRICED ALTERNATIVE TO FULL METRO CALLING WILL
BE OFFERED IF THE EAS IS IMPLEMENTED.**

It is true that the *price* for the lower cost alternative does not appear in bold on the same page as the price for flat rate EAS. However, this fact is adequately compensated for by the bold capitalized headline that introduces the information about the lower priced alternative at the top of page two.

As to the informative paragraph following the bold capitalized headline, the Commission finds that it informs readers about the specifics of that lower cost alternative: scope of service, price, etc. The Commission finds that the paragraph presents this information clearly, correctly and in a proper perspective.

In addition, the enclosed generic brochure also addresses the lower cost alternative. The brochure presents in large print a question that is likely to catch the eye of subscribers who might find the lower cost alternative attractive. The brochure then informs the reader that

...by law, a rate called a "lower cost alternative" must be offered to subscribers if the EAS route you are voting on is from your town into the Mpls/St. Paul calling area.

The brochure then properly refers the reader back to the letter for details, which are provided in full as cited above.

c. Second Page Placement

Regarding the location of the information about the lower cost alternative, it is suggested that appearance of this information on the second page prejudiced the chances for a fair poll because subscribers may not read the second page. However, the letter clearly has a second page¹ so any failure to read the second page could not be inadvertent. Moreover, the information is not "buried" or "obscurely placed" on the second page as one of the objectors asserted: as noted earlier, information on the lower cost alternative appears prominently, right at the top of the page, introduced by a bold, capitalized headline.

In order to find that the second page placement of this information was prejudicial, therefore, the Commission would have to believe that subscribers having adequate interest to read the first page of a letter on such an important topic would not read the second page. The Commission simply cannot accept such a speculative suggestion.

d. Balloting Materials Have Not Confused Subscribers in Other Exchanges

The Commission notes that the letter used in the Cannon Falls exchange was similar to the letters that have been used in all other exchanges that have been polled concerning EAS with the metro calling area. In these letters, the price for the lower cost alternative does not appear in bold next to the price for flat rate EAS as a "third option", as suggested by one of the objectors.

Nevertheless, no objections to the fairness of these presentations have been received. More telling, subscribers in some of the other exchanges presented with essentially the same materials and order of presentation as used in the Cannon Falls exchange have approved the proposed EAS. This suggests that subscribers are responding to the content of the EAS proposal and are not biased against the proposal by the Commission's balloting materials.

¹ The letter is not signed on the first page, which indicates to the reader that the letter continues on the back. The third paragraph indicates the existence of a second page by referring to a chart "on the reverse side of this letter". Perhaps most compelling, the printing on the back (page 2) can be easily seen by anyone looking at the first page.

3. Commission Findings

On the basis of the foregoing analysis, the Commission concludes that the polling materials accurately and effectively presented the EAS question to Cannon Falls subscribers and were free of the anti-EAS bias asserted by the three objecting subscribers. As a consequence, the Commission finds no grounds to invalidate the polling results and will proceed to certify those results.

At the same time, the Commission is always alert to the possibility that clear information can be made clearer. Accordingly, the Commission will continue its oversight of the balloting materials. The Commission will not hesitate to alter them if even-handed improvements come to light.

B. Certification of Balloting Results

The results of the November 15 through December 30, 1994 EAS polling in the Cannon Falls exchange as reported by the polling contractor are as follows:

<u>Percent Voting</u>	<u>YES Votes</u>	<u>NO Votes</u>
69.2 percent	1,175	1,430

C. Commission Action

Because a majority responding to the Commission's poll voted against the EAS, the Cannon Falls petition fails to meet the third and final EAS requirement: adequate subscriber support. Minn. Stat. § 237.161, subd. 1 (a) (2) (1992). Accordingly, the Commission will deny the petition and close this docket.

ORDER

1. The polling results for the Cannon Falls exchange is certified as set forth above: less than a majority of subscribers returning their ballots favored installation of the proposed EAS.
2. The petition for EAS between Cannon Falls and the Minneapolis/St. Paul metropolitan calling area (MCA) is denied.
3. Within 10 days of this Order, GTE shall file a proposed customer notice of the polling results with Commission Staff. The Notice shall be a bill insert included in the earliest possible billing cycle following approval by Commission Staff.
4. As soon as the customer notice is approved by Commission Staff, this docket shall be closed.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)